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In the

Supreme Court of the United States

WILLIAM R. JANOWSKI and ROBERT H. BARNHISEL, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs-Petitioners,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL NO. 710 PENSION FUND, WILLIAM D. JOYCE, JOHN D. KELAHAN, ANTHONY CURCIO, ROBERT J. BAKER, JOHN J. BARRANCO AND ROY M. PRIDE,

Defendants.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Trustees of Teamsters Local No. 710 Pension Plan can deny 15,000 participants ERISA-mandated benefits based upon the normal retirement age of 57 when the plan permits participants to retire and receive full benefits at age 57, simply by redesignating the pre-ERISA normal retirement age of 57 as the regular retirement age?

2. Whether under ERISA the Trustees of Teamsters Local No. 710 Pension Plan can ignore benefits payable under the terms of the pre-ERISA Plan to participants who had completed 20 years of service?

PARTIES TO THE PROCEEDINGS

William R. Janowski and Robert H. Barnhisel, individually and on behalf of all others similarly situated, plaintiff-petitioners.

International Brotherhood of Teamsters Local No. 710 Pension Fund and William D. Joyce, John D. Kelahan, Anthony Curcio, Robert J. Baker, John J. Barranco and Roy M. Pride, Trustees of the Fund, defendants.

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OPINIONS BELOW

The unpublished Opinions of the United States District Court for the Northern District of Illinois dated July 24, 1980, October 30, 1980, and February 4 and 17, 1981, are set forth in the Appendix.

The Opinion of the United States Court of Appeals for the Seventh Circuit for which review is sought is set forth in the Appendix. It is officially reported at 673 F.2d at 931 (1982).

JURISDICTION

The Opinion of the United States Court of Appeals was entered on March 8, 1982. The Order denying cross-petitions for rehearing was entered on April 7, 1982.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254.

The questions presented for review involve important questions of federal law which have not been but should be settled by the United States Supreme Court. The questions are issues of first impression involving the proper interpretation of ERISA. The outcome of this decision directly affects the benefits of approximately 15,302 participants in the I.B.O.T. Local No. 710 Pension Fund and indirectly affects many thousands of participants in other Teamster pension plans which have made similar plan amendments. During 1976 and 1977 alone, 25 surviving spouses of participants who had completed 20 years of service but died between ages 47 and 55 were denied survivors' benefits because of defendants' actions. In addition, benefits of millions of plan participants may be affected by the interpretation of accrued benefits under pre-ERISA pension plans.

STATUTES AND REGULATIONS

The texts of the following statutes and regulation are set forth in the Appendix:

29 U.S.C. §1002(24)
29 U.S.C. §1054(b)(1)(D)
26 U.S.C. §411(a)(8)
26 U.S.C. §411(b)(1)(D)
26 C.F.R. §1.411(a)-7(b)(1)

STATEMENT OF THE CASE

Petitioners, plaintiffs below, are participants in the pension plan of the International Brotherhood of Teamsters Local No. 710 Pension Fund ("the Plan").

The Plan prior to February 1, 1976, ("the pre-ERISA Plan") provided retirement benefits to participants who completed 20 years of service. Normal retirement benefits were paid to participants who retired at the normal retirement age of 57. Early retirement benefits were provided to participants who retired between ages 47 and 57. Deferred vested benefits at age 65 were provided to participants who terminated employment before age 50.

On April 21, 1976, the defendant Trustees amended the Plan ("the Amended Plan") retroactively to February 1, 1976. In the Amended Plan, the Trustees redesignated age 57 as the "Regular Retirement Age" and designated age 65 as the "Normal Retirement Age." By using the newly defined normal retirement age of 65 for determining benefits under the Amended Plan, the Trustees deprived participants who had been enrolled in the pre-ERISA Plan of the following ERISA rights and protections:

(a) The right to have actuarial reductions based upon age 57 rather than age 65 for benefits commencing prior to age 57;

(b) The right to have benefits commence at age 57 rather than at age 65; and

(c) The right to pre-retirement survivor benefits between ages 47 and 57 rather than between ages 55 and 65.

Under the pre-ERISA Plan, participants with at least 20 years of service were entitled to receive, depending upon their respective ages, either (a) $450 at age 57, (b) an amount which had been actuarially reduced from $450 if benefits commenced prior to age 57; or (c) $250 at age 65. In the case of participants who had completed the requisite 20 years of service prior to the amendment of the Plan, the Amended Plan disregards these benefits in calculating participants' accrued benefits. The Amended Plan also does not provide pro rata credit for the accrual of benefits by participants who are employed part-time.

Finally, the Amended Plan changed the method of calculating early retirement benefits and the benefits of vested participants who terminate employment prior to age 50. Under the formula set forth in the Amended Plan, benefits are less for participants who early retire and vested participants with 20 years of service than the benefits provided by the pre-ERISA Plan.

Pursuant to 29 U.S.C. §1132, plaintiffs filed an Amended Complaint alleging that defendants unlawfully reduced benefits already earned and deprived participants of benefits mandated by ERISA in amending the Plan contrary to law and the Plan itself. On February 2, 1979, the District Court certified the following class:

> All persons who are now, or who were as of February 1, 1976 members of Local 710 of the International Brotherhood of Teamsters and who have accepted early retirement or intended to do so under the terms of the Pension Plan of said Local 710 and whose early retirement benefits were or will be affected by the amendments to the Plan made as of February 1, 1976.

Effective July 1, 1979, the Trustees further amended the Amended Plan to provide that participants could elect to receive the benefits upon early retirement or deferred vested retirement provided by the pre-ERISA Plan.

The District Court, by decisions on July 24, 1980, and October 30, 1980, on cross motions for summary judgment, granted defendants' motion and dismissed plaintiffs' claim that age 65 had been improperly designated as the normal retirement age in the Plan. Plaintiffs appealed this conclusion. The District Court also granted plaintiff's motion and ordered that the Amended Plan must be reformed to provide proper benefit accruals for service before 1976 and for part-time service. Because the Amended Plan had been amended to provide for the early retirement and deferred vested benefits about which plaintiffs had complained, further amendments were unnecessary, but the District Court enjoined defendants from acting to reduce such benefits. The court also denied various procedural defenses advanced by defendants. Defendants appealed the portions of the summary judgment orders adverse to them.

Defendants also appealed the District Court's orders of February 4 and 17, 1981, awarding plaintiffs attorneys' fees. Plaintiffs also appealed the fee award to the extent that the fee was reduced by reason of the decision on the retirement age issue.

The Court of Appeals for the Seventh Circuit on March 8, 1982, affirmed the District Court's decision in favor of plaintiffs on the various procedural issues, the part-time credit issue and the award of fees. The Court

of Appeals also affirmed the decision in favor of defendants on the normal retirement issue and reversed the pre-1976 benefit accrual decision. The injunction was removed in the absence of evidence that the Trustees would deprive participants of the benefits now set forth in the Amended Plan. Each party was ordered to bear its own appeal costs.

Cross-petitions for rehearing were denied on April 7, 1982.

ARGUMENT

A. The Trustees of Teamsters Local No. 710 Pension Plan cannot deny 15,000 participants ERISA-mandated benefits based upon the normal retirement age of 57 when the Plan permits participants to retire and receive full benefits at age 57, simply by redesignating the pre-ERISA normal retirement age of 57 as the Regular Retirement Age.

Under ERISA, various features of defined benefit pension plans are based upon the "normal retirement age". Both 29 U.S.C. §1002(24) and 26 U.S.C. §411(a)(8) provide that:

> "the term 'normal retirement age' means the earlier of
>
> (A) the time a plan participant attains *normal retirement age under the plan*, or
>
> (B) the later of — (i) the time a plan participant attains age 65, or (ii) the 10th anniversary of the time a plan participant commenced participation in the plan." (Emphasis added).

Under the pre-ERISA Plan, age 57 had been designated as the normal retirement age since at least 1964. As a result of the Trustees' amendments, the Amended Plan now specifies two ages as retirement ages:

> Age 57 — the "Regular Retirement Age" and
> Age 65 — the "Normal Retirement Age".

Neither is an early retirement age. Early retirement benefits are payable prior to age 57.

Recognizing that "regular" and "normal" are synonymous terms, defendants conceded in their Answer that changing age 57 from the "Normal Retirement Age" in

the pre-ERISA Plan to the "Regular Retirement Age" in the Amended Plan was a mere "rhetorical change".

The District Court concluded, however, that, as defendants had contended, the statutory provisions permit the Trustees to fix a normal retirement age, subject to certain limitations, and that the Amended Plan designated age 65 as the "Normal Retirement Age". After referring to legislative history which indicates that the normal retirement age is generally to be the age set forth in a plan, the District Court stated that:

> "Defendants' position is also consistent with the interpretation adopted by the agency charged with the responsibility to administer these new statutory provisions [Citation omitted]. Department of Treasury regulation 26 C.F.R. (1979) 1.411(a)-7(b) is squarely supportive of that position, as is Revenue Ruling 78-120, 1978-1, C.B. 117, requiring special treatment below age 55.
>
> Plaintiffs rely upon the meaning of 'normal retirement age' as generally understood *prior* to the enactment of E.R.I.S.A. That argument cannot stand against the language of the statute and its legislative history. While plaintiffs cite an interpretive letter from A.D. Fields, Chief, Employee Plans Technical Branch (I.R.S.), which apparently supports their position (Exhibit A to plaintiffs' reply memorandum), that opinion likewise is overcome by the much weightier sources to the contrary." (Emphasis supplied).

Plaintiffs acknowledge that age 65 is designated in the Amended Plan as the "Normal Retirement Age." Plaintiffs submit that the use of synonymous terms, i.e., "Regular" and "Normal", coupled with the admission by defendants that the redesignation of age 57 from the

"Normal Retirement Age" to the "Regular Retirement Age" was a mere rhetorical change, necessitates an analysis of the phrase "normal retirement age under the plan" in 29 U.S.C. §1002(24) and 26 U.S.C. §411(a)(8) to ascertain whether age 57 or age 65 is properly the normal retirement age.

The necessity of analyzing the statutory language would be self-evident if the defendants had used the terms "Age 57 Retirement Age" and "Age 65 Retirement Age" or any other nomenclature. Recourse to such analysis should not be negated because of the use of synonymous terms. As the following analysis reveals, the legal authorities referred to by the District Court fully support plaintiffs' contention.

Prior to ERISA, normal retirement age was defined in Rev. Rul. 71-147, 1971-1 C.B. 116, as follows:

> "The normal retirement age in a pension or annuity plan is the *lowest* age specified in the plan at which the employee has the right to retire without the consent of the employer and receive retirement benefits based on service to date of retirement at the full rate set forth in the plan (i.e., without actuarial or similar reduction because of retirement before some later specified age.)" (Emphasis added.)

See also Section 2.08 of Rev. Rul. 71-446, 1971-2 C.B. 187, which sets forth the identical definition. Reference to employer consents in the rulings relates to rules prohibiting discrimination by employers. The rules pertaining to normal retirement age have been in effect for decades. See Rev. Rul. 57-163, 1957-1 C.B. 128 at 149. Defendants arbitrarily ignored them in amending the pre-ERISA Plan.

Counsel for plaintiffs requested information from the National Office of the Internal Revenue Service concerning the proper interpretation of the phase "normal retirement age under the plan" as used in 26 U.S.C. §411(a)(8)(A). The response received from A. D. Fields, Chief, Employee Plans, Technical Branch, states in relevant part:

> "Normal retirement age is the lowest age specified in a plan at which the employee has the right to retire without the consent of the employer and receive retirement benefits based on service to date of retirement at the full rate (without actuarial reduction for earlier commencement) for such service set forth in the plan."

Such a letter is issued only when the request involves a well-established interpretation or principal of tax law. Rev. Proc. 80-20, 1980-1 C.B. 633, at 4.06.

Revenue Ruling 78-120, 1978-1 C.B. 117, cited by the District Court in support of defendants' position was misapprehended by the Court. The specific normal retirement age approved in Rev. Rul. 78-120 was defined in the following terms:

> "The pension plan provides that, upon attaining a certain specified age (less than 65), the employee has the right to (1) retire without the consent of the employer, and (2) receive benefits based on service to date of retirement at the full rate provided in the plan (i.e., without actuarial or similar reduction because of retirement before some later specified age)."

This is precisely the definition previously set forth in Rev. Rul. 71-147 and Rev. Rul. 71-446. The District Court's conclusion that Rev. Rul. 78-120 supports defendants' interpretation is clearly erroneous.

Equally erroneous is the District Court's assertion that plaintiffs rely upon the meaning of "normal retirement age" as generally understood prior to the enactment of ERISA. Although Rev. Rul. 71-147 pre-dated ERISA, Rev. Rul. 78-120 and the letter from Chief Fields are post-ERISA rulings. Similarly, Rev. Rul. 71-446, which contains the identical definition of normal retirement age, has been modified several times since the enactment of ERISA without any change in this definition. See, e.g. Rev. Rul. 75-480, 1975-2 C.B. 131; Rev. Rul. 76-76, 1976-1 C.B. 106; and Rev. Rul. 78-92, 1978-1 C.B. 118.

As evidenced by the foregoing, the interpretation of the phrase "normal retirement age under the plan" has consistently been interpreted by the Internal Revenue Service before and after the enactment of ERISA. The District Court's conclusion that plaintiffs relied upon pre-ERISA interpretations of "normal retirement age" is clearly erroneous.

Treasury Reg. §1.411(a)-7(b)(1) also supports plaintiffs. The regulation provides in relevant part that:

> "If an age is not specified by a plan as the normal retirement age, then the normal retirement age under the plan is the earliest age beyond which the participant's benefits under the plan are not greater solely on account of his age or services."

In discussing the regulation, defendants have urged that:

> " 'the unrelated benefit' test is at best now only useful in determining the normal retirement age if an age is not specified as such under the pension plan."

Plaintiffs agree that the "unreduced benefit" test is determinative if no age is specified in a plan. However, the "unreduced benefit" test is equally useful to resolve the

ambiguity arising from the use of the synonymous terms "Regular Retirement Age" and "Normal Retirement Age." Under this test, only age 57 can be the normal retirement age under the Amended Plan. Age 57 is the lowest age specified in the Amended Plan, as well as in the pre-ERISA Plan, at which an employee has the right to retire without the consent of the employer and receive retirement benefits based upon service to the date of retirement at the full rate set forth in the Amended Plan, i.e., there is no actuarial or similar reduction of these benefits because of retirement before some later age. Also, benefits commencing after age 57, i.e., at age 65, are greater solely on account of additional service or attainment of a greater age.

The District Court acknowledged its obligation to heed:

> "the interpretation adopted by the agency charged with the responsibility to administer these new statutory provisions."

The Internal Revenue Service's interpretation of "normal retirement age" is evidenced by revenue rulings issued both before and after ERISA, the provisions of the regulation and the interpretative letter from the Chief of the Technical Branch of the Internal Revenue Service. It is the earliest age at which unreduced benefits are payable, i.e., age 57 in the Amended Plan. The Court's failure to heed the Internal Revenue Service's interpretation is reversible error.

By affirming the District Court, the Court of Appeals failed to correct the lower court's error. Its opinion does not discuss the consistent interpretation by the Internal Revenue Service. Moreover, the Court of Appeals appears to have erroneously concluded that age 65 is the normal

retirement age applicable solely to participants who were not enrolled in the pre-ERISA Plan. The Court stated:

> "The amended Plan retained the right to receive benefits at age 57 with 20 years of service but changed the designation from normal retirement to regular retirement and, pursuant to 29 U.S.C. §1002(24) and 26 U.S.C. §411(a)(8), adopted a new normal retirement age of 65, *applicable to participants who were not enrolled in the pre-ERISA Plan.*
>
> . . . .
>
> The trustees conceded that participants in the pre-ERISA Plan have a right to benefits at age 57 after 20 years of credited service but emphasize that the right has been incorporated into the new Plan under the designation regular retirement. They assert that nothing in section 411(a)(8) requires that they designate an age less than 65 as the normal retirement age *for participants who were not enrolled in the pre-ERISA Plan.*
>
> . . . .
>
> We agree that age 65 was permissibly chosen as the normal retirement age *under the new Plan.*" (Emphasis added)

Plaintiffs and the class certified by the District Court do not include participants who were not enrolled in the pre-ERISA Plan. The failure to recognize the distinction between class members and participants who were not enrolled in the pre-ERISA Plan and the Court's ensuing confusion undoubtedly influenced its decision. The Court, apparently believing that retention of age 57 as the regular retirement age protected the pre-ERISA participants, failed to discern that it is such class members who have been deprived of their ERISA rights.

The Appellate Court's confusion is further illustrated by the Court's statement that:

> "Janowski interprets the word 'plan' in the phrase 'normal retirement age under the plan' . . . to refer to the pre-ERISA Plan."

Plaintiffs *never* advanced such an interpretation. The word "plan" in the statute can only refer to the Amended Plan. Plaintiffs' interpretation was of the phrase "normal retirement age under the [Amended] plan." The failure of the Court of Appeals to understand the nature of plaintiffs' argument explains the absence of any discussion of the legal authorities supporting plaintiffs.

Finally, in response to the complaint of plaintiffs that the defendants did not act timely when, on April 26, 1976, they retroactively amended the normal retirement age, the Court of Appeals curiously stated:

> "Janowski makes much of the fact that the normal retirement age was not redesignated until April 21, 1976. *Citing no authority in support,* he argues that in order to change the normal retirement age from 57 to 65 the trustees would have had to make the change before February 1, 1976, the date on which the ERISA reforms were incorporated into the prior Plan." (Emphasis added)

The Court of Appeals apparently overlooked pages 6-10 of Plaintiffs' Reply Brief in which plaintiffs set forth the authorities which preclude defendants' retroactive amendments. The Court's oversight is understandable only in light of its erroneous conclusion that the Normal Retirement Age under the Amended Plan is solely "applicable to participants who were not enrolled in the pre-ERISA Plan." Because this conclusion is clearly erroneous, the decision should be reversed.

B. Under ERISA, The Trustees of Teamsters Local No. 710 Pension Plan Cannot Ignore Accrued Benefits Payable Under the Pre-ERISA Plan to Participants Who Had Completed 20 Years of Service.

In relevant part, 29 U.S.C. §1054(b)(1)(D) and its counterpart, 26 U.S.C. §411(b)(1)(D), provide that a defined benefit pension plan satisfies the benefit accrual provisions imposed by ERISA with respect to years of participation prior to 1976:

> "only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of —
>
> i) his accrued benefit determined under the plan, as in effect from time to time prior to September 2, 1974, or
>
> (ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation."

In analyzing the statutory provisions, the District Court succinctly and accurately stated:

> "Defendants contend that the old plan, dated August 1, 1973, contained no accrued benefit formula such as now appears in 3.10 of the new plan and that therefore the foregoing subsection (i) is inapplicable. However, the old plan did provide for specific benefits to persons retiring at age 57 after 20 years of qualified service."

The "specific benefits" to which the District Court referred required 20 years of service. For participants having the requisite service, such benefits were fully vested and due and payable in accordance with the terms of the pre-ERISA Plan. The amounts of the benefits

depended upon a participant's age and were either (a) $450 per month at age 57; (b) an amount which was reduced actuarially from $450 per month for benefits commencing prior to age 57; or (c) $250 per month at age 65.

The Amended Plan provides for the accrual of benefits for service prior to January 31, 1976, in accordance with 29 U.S.C. §1054(b)(1)(D)(ii) and 26 U.S.C. §411(b)(1)(D)(iii), i.e., at the rate of one-half the benefit accrual rate for post-ERISA service. In the case of participants having twenty years of service under the pre-ERISA Plan, the resulting accrued benefit as of February 1, 1976 was $165. Even after benefit increases on July 1, 1976, the accrued benefit was $210. Both amounts are less than the benefits actually provided under the pre-ERISA Plan. Because the defendants ignored the actual benefits payable from the pre-ERISA Plan to participants having 20 years of service before April 1976, the District Court properly concluded that the Amended Plan failed to satisfy the statutory requirements for calculating pre-ERISA accrued benefits.

If the District Court erred, it did so solely in concluding that there was an implicit accrual of benefits under the pre-ERISA Plan ratably over each of twenty years. Plaintiffs have never argued that there was an implicit benefit accrual formula in the pre-ERISA Plan. Plaintiffs have maintained only that participants with 20 years of credited service had a definitely determinable accrued benefit under the pre-ERISA Plan and that such benefit was greater than the accrued benefit for pre-ERISA service calculated under the Amended Plan, i.e., $165 per month payable at age 65.

Since plaintiffs' contention is demonstrably correct, if the Court of Appeals properly concluded that the District

Court erred with respect to the implicit accruals, it should have remanded the case to the District Court for further proceedings. The Court of Appeals failed to do so because of its erroneous interpretation of the statutory provisions.

In analyzing the statutory provisions, the Court of Appeals stated:

> "The statute sets forth two formulas to be applied to pre-ERISA years. Subsection [29 U.S.C. 1054(b)(1)(D)] (i) provides that accrued benefits shall be determined under the plan, as in effect from time to time prior to September 2, 1974. This subsection is triggered whenever a prior plan contained an accrued benefit formula. Subsection (ii) provides the formula to be applied if the old plan had no accrued benefit formula."

After reviewing the statutory language, the Court of Appeals erroneously concluded both that the statute required a formula for determining pre-ERISA accrued benefits and that the pre-ERISA Plan did not specify an accrued benefit formula. The Court sought an ERISA-style ratable formula in the pre-ERISA Plan and, of course, found none. The pre-ERISA Plan does, however, have the equivalent of an accrued benefit formula. The pre-ERISA Plan provides for the calculation of accrued benefits under a "back loaded" benefit accrual method, i.e., benefits accrue in the year of completing twenty years of service.

"Back loaded" plans were common prior to the enactment of ERISA. See, e.g. H.R. Rep. 93-779, 93rd Cong. 2d Sess. 60, 1974-3 C.B. 303. "Back loading" is still permitted by ERISA but has been limited by the enactment of ERISA.

Simply stated, subsection (i) of the statutes preserves whatever benefits may have been accrued under a pre-ERISA method of accruing benefits, whether by a ratable formula or by a "back loaded" method, and subsection (ii) limits the amount of "back loading" allowable for pre-ERISA service. The Court of Appeals' failure to recognize the benefits actually accrued by participants having the requisite 20 or more years of service under the pre-ERISA Plan is clearly erroneous and reversible error. The case should be remanded for further proceedings.

CONCLUSION

For the reasons stated, the decision of the Court of Appeals on the retirement age issue and the pre-ERISA benefit accrual issue should be reversed and the case should be remanded to the District Court for further proceedings.

Respectfully submitted,

William R. Janowski and Robert H. Barnhisel, individually and on behalf of all others similarly situated, Petitioners

By: /s/ Lawrence H. Eiger
Lawrence H. Eiger